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## Melville Weston Fuller

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result of the decision sand and gravel companies are already making overtures to farmers along the river's shores regarding payment for any rights the company *might* invade in its dredging operations in the bed of the river.

S. R. W., Jr.

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MELVILLE WESTON FULLER. By Willard L. King.<sup>1</sup> New York: Macmillan Co. 1950. Pp. x, 394. \$5.00.

While it might be accurate, it would not be adequate to stigmatize this book as a competent but undistinguished biography of a competent but undistinguished judge. True, the author has not done for Fuller what Beveridge did for Marshall, or Fairman for Miller, or even Mason for Brandeis; but he did not have a Marshall, a Miller, or a Brandeis as subject.

A student of the law is apt to seek in judicial biography illumination of decisions, doctrines, developments as to which the subject had some significant part. On a handful of questions, he will find such materials here, most notably in connection with the historical shell game which has arisen from *Pollock v. Farmers' Loan & Trust Co.*;<sup>2</sup> Mr. King has succeeded in pretty thoroughly dissipating the myth of the fluctuating justice which has attached to that decision. His interpretation of Fuller's somewhat ignoble role in invoking the commerce clause to paralyze efforts of both the state and federal governments in the regulation of business is not quite so convincing. Seeing it as animated by "experiences demonstrating the dynamic and constructive value of private enterprise, he overlooks or at least omits to mention how here, as well as in the "morality" cases (Mormon Church, liquor, lottery, *etc.*), Fuller's steady preference was for making the public will yield to the private pursuit and retention of gain. This is not to suggest that there was anything sinister or consciously biased in such an approach; rather, it was probably a reflection of attitudes generally held in the legal profession of that and perhaps of this time which in turn reflect the influence of conscientious and wholly proper concern with securing the interests of clients. The most that can be charged to Fuller is that he did not as a judge transcend his prior ex-

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<sup>1</sup> Member of the Illinois bar.

<sup>2</sup> 157 U.S. 429, 158 U.S. 601 (1895).

perience but remained a practising lawyer in sentiment after he had put on the robe. And of course only the very greatest can do otherwise.

It is, indeed, as the biography not of a judge but of a lawyer who happened to be assigned the role of a judge that the book is most interesting, just as it was in his capacity of a lawyer on the bench that Fuller was most successful. If we read the life as legal biography with the judicial phase incidental rather than as primarily judicial biography, it is highly rewarding in its picture of the life of the nineteenth century lawyer. All sorts of little sidelights—on legal education and admission to the bar, on the ethics of advertising, on the “starvation period”, on the going wage for clerkships, on the composition of a successful practice at the time, the tendency even then to avoid the criminal practice as soon as volume of business permitted, the behavior of the bar with reference to settlements and appeals, and a score of other matters—twinkle out at us as we turn the pages. Even as Chief Justice, Fuller’s qualities were eminently those of senior partner of a successful firm—his affability and capacity for achieving harmonious co-operation of the “members”, his probity, his regard for the institutional dignity of the “firm” (which happened to be the Court), his patient, thorough, but somewhat unimaginative exploration of issues, his special skill in management and administration of the “firm’s” business. Despite a Miller at the beginning and a Holmes at the end, Fuller’s chief justiceship was not a period of a great court; rather, it was one of judicial sterility seldom paralleled in the Court’s history. In some measure this was because the chief justice had not the temperament of a statesman, like Marshall or Taney, but the temperament of a solid member of the bar; and perhaps the times were not ripe for any other sort of leadership. At any rate, the story Mr. King tells is one of an excellent lawyer off and on the bench and has a real value in recording and preserving the traditions of a great profession.

Since this review is written for a legal periodical, I have omitted mention of the less strictly professional aspects of Fuller’s work—with the Venezuelan boundary dispute, the Douglas candidacy for president, *etc.*, all of which will be of general historical interest. The book is written in a sprightly manner and the author has a happy way with an anecdote which should give the book an appeal beyond the legal profession. Some of the apparatus of scholarship are not so dextrously used. I can hardly conceive of

a less accessible form of documentation than the higgledy-piggledy accumulation of references in a caboose such as is here used; and I find the charts of dissents, opinions written, and like-mindedness attached impressive but not especially valuable. Others may feel otherwise.

I recommend the reading of this competent but undistinguished biography of a competent but undistinguished justice because it also happens to be an able and amiable account of an able and amiable lawyer.

Albert S. Abel

